

Submission to the Seanad Public Consultations Committee on **Key priorities and challenges facing Ireland in complying with its obligations under the ICCPR**

The **Immigrant Council of Ireland – Independent Law Centre (ICI)** is the leading voice in securing improved rights and protections in the area of immigration, citizenship and anti-racism which benefit Irish citizens, migrants and their families. As an organisation we pride ourselves on being pro-active. We offer support, advice and information, while also achieving positive change through strategic legal action and engagement with lawmakers to make immigration laws fit for purpose. Ensuring access to justice is the cornerstone of all our work. We are committed to supporting individuals and families often at a vulnerable stage in their life, including victims of human trafficking. We work in coalition with like-minded individuals, organisations, stakeholders and investors to deliver genuine change at both a national and European level. The ICI has contributed to a number of reports to UN and CoE monitoring bodies on Ireland’s compliance with international and regional human rights instruments, including the ICCPR,ⁱ CERDⁱⁱ and CEDAWⁱⁱⁱ.

The ICI would like to make a submission to the Seanad Public Consultation Committee setting out what we consider ongoing short-comings in Ireland’s compliance with the ICCPR and the key issues affecting our area of work, which we think need to be addressed.

1. The Equal Right of Men and Women to the Enjoyment of all Civil and Political Rights (Article 3)

In relation to the issue of **Domestic and Gender-Based Violence**^{iv}, the ICI would like to highlight its concerns regarding the situation of foreign nationals suffering domestic violence in Ireland. The ICI is part of the Domestic Violence Coalition^v which has recommended to the Minister for Justice and Equality that comprehensive secondary regulations dealing with family reunification be introduced, including matters related to entry, residence and access to independent/ permanent residence for family members of Irish citizens and third country nationals living in Ireland, including where domestic violence is experienced.

Two specific issues require urgent consideration, these being: 1.) The provision of **formal recognition of domestic violence in immigration law** by making provisions which enable dependent family members to apply to remain in Ireland as victims of domestic violence; and 2.) **guaranteeing access to safe emergency housing and essential services, including welfare benefits** to the meet basic needs of victims who have pending applications for permission to remain in Ireland on an independent basis.

In order to protect migrants experiencing domestic violence, the Domestic Violence Coalition has urged that Government provide a statutory basis for the current discretionary administrative approach that is taken towards applications to be granted an independent residence permit.

In the short term, a comprehensive and coordinated **administrative response** is required by the relevant statutory stakeholders, namely the Irish Naturalisation and Immigration Service (INIS) and the Department of Social Protection/HSE. Positive steps that have been taken include the **publishing of information on the INIS** about the possibility to apply for an independent permit where domestic violence has been experienced and setting out guidelines for the making of such an application, effectively restating the provisions contained in Section 4(7) of the Immigration Act 2004.^{vi}

However, the information contained on the INIS website **remains contradictory** in that, for example, the section on ‘Spouse of an Irish National/Civil Partnership with an Irish National’ continues to state that “(T)here are no rights of retention of residence in the event of separation/divorce”.^{vii}

Community welfare officers should be directed to positively exercise their discretion to issue a temporary basic supplementary welfare payment to ensure that a person is in a position to access emergency accommodation and supplies. This is essential to ensure that women and their children who are at risk can remain in their homes safely or, if they need to leave, that they can do so safely and without risk of being left destitute or having to return to their partner to avoid destitution or if they are unable to be accommodated at refuge accommodation for financial reasons.

Additionally, we submit that the **€300 registration fee** generally payable by those granted permission to remain in the State effectively poses a barrier even to successful applicants for a change of status under the current ‘*Victims of Domestic Violence Immigration Guidelines*’.^{viii}

In the longer term, a **legislative response** is required. Within the existing Programme for Government there are a number of opportunities to progress legislative reform, including, for example, the review of existing domestic violence legislation. However, **future legislation on ‘Immigration Residence and Protection’ and/or secondary regulations** made thereunder are an obvious place for addressing this issue.

2. The Right to Freedom from Slavery (Article 8) – Human Trafficking

2.1. Victims of Trafficking in the Asylum Process^{ix}

The rights afforded to asylum seeking victims of trafficking versus other suspected victims of trafficking are not the same. Asylum seeking victims of trafficking have less access to safe and appropriate accommodation, education, training, employment and the possibility of acquiring longer-term status in the State.

Furthermore, those victims of trafficking who are in the asylum process are precluded from the benefits of a formal identification by the competent authorities and from receiving any acknowledgement to the effect that they are ‘suspected victims of trafficking’ pursuant to the Administrative Immigration Arrangements, despite co-operating fully with the competent authorities.

The ICI is most concerned that while under Section 21 of the 2011 Administrative Immigration Arrangements - *change of status and leave to remain* – a person who has assisted the Gardaí and has held a Temporary Residence Permit for three years can apply for a change of status and be granted permission to remain in the State on humanitarian grounds, asylum seeking victims of trafficking will not be able to accumulate this required three year period as they will not receive an initial Temporary Residence Permit until after their application for refugee status has been determined pursuant to Section 9(2) of the Refugee Act, 1996.

The ICI is particularly concerned that victims of trafficking who had been cooperating with the competent authorities throughout their asylum claim have in fact received notification of intention to deport pursuant to Section 3(3) of the Immigration Act, 1999 following the refusal of their applications for refugee status rather than being issued with a Temporary Residence Permit forthwith.

2.2. Legal Representation of Victims of Trafficking in Ireland

The Immigrant Council of Ireland (ICI) is of the view that immediate access to legal advice and intervention is critical to ensuring that all victims of trafficking are fully informed of their rights and obligations at the earliest possible opportunity and are able to make an informed choice regarding their immigration status (*where relevant*).

Currently, and contrary to the information provided in the Government Report^x, the Legal Aid Board – through its Refugee Legal Service – only provides “*legal services on certain matters to persons identified by the Garda National Immigration Bureau (GNIB) as “potential victims” of human trafficking under the Criminal Law (Human Trafficking) Act 2008*”,^{xi} in other words, **a potential victim of trafficking is required to present herself/himself to An Garda Síochána** and provide at least basic details of their identity and situation to them **before they are eligible for State funded legal assistance**.

Furthermore, the services offered to ‘potential victims’ of human trafficking are currently limited to information only in relation to what is involved in a **criminal trial** for a victim/witness, **compensation** and **voluntary return**.

The ICI is of the opinion that while the legal services currently provided to victims of trafficking in Ireland seem to meet the minimum requirements of the UN Protocol, they fall short of the requirements of Article 15(2) of the Council of Europe Convention which provides for the right to **free legal assistance and legal aid** for victims also in relation to **compensation and legal redress**.

2.3. Compensation

Article 6(6) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime provides that “(E)ach State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”.

Currently, the avenues for obtaining compensation or financial redress for victims of trafficking in Ireland are limited: It is possible for victims to obtain an **order from the court for damages to be paid by the trafficker – post conviction**. However, evidence from the UK shows that while seemingly a straightforward process, the low percentage of compensation orders actually made suggests otherwise.^{xii}

Additionally, the **Criminal Justice Compensation Tribunal**^{xiii} considers applications from people who suffer a personal injury or death as a result of crime of violence. Compensation may be awarded on the basis of any vouched out of pocket expenses, including loss of earnings, experienced by the victim only. Additionally, the ICI is concerned that the requirement that application must be made to the Tribunal as soon as possible but not later than three months after the incident, may lead to the exclusion from access to compensation of victims who are too traumatised to report their ordeals to the Gardaí in a timely fashion.

Furthermore, personal injury claims could be pursued through **civil proceedings in the courts** or through the **Injuries Board**^{xiv} and, in cases of trafficking for forced labour, a case for breach of labour regulations, unpaid wages etc. may be brought through the **civil courts** or the **Employment Appeals Tribunal**.^{xv}

However, there is **no state funded compensation fund for victims of human trafficking** in Ireland at present and the Government has indicated in its 'Review of the National Action Plan To Prevent and Combat Trafficking in Human Beings 2009 – 2012' that it is of the view that the *"establishment of a dedicated compensation fund for victims of human trafficking would be inappropriate given that no such fund exists for any other victims of crime. While there is no doubt that victims of human trafficking constitute an extremely vulnerable group it would be difficult to justify not also having a compensation fund for victims of other crimes such as rape, etc."*^{xvi}

3. The Rights of Foreign Nationals in the State (Article 13)

The ICI wishes to highlight that the response to the Concluding Observations of the UN Human Rights Committee currently contained in Ireland's Draft Fourth Periodic Report under the International Covenant on Civil and Political Rights, fails to address certain matters raised by the Committee.

Firstly, the Committee had requested the amendment of the Immigration, Residence and Protection Bill to **outlaw summary removal** which is incompatible with the Covenant. And secondly, the Committee had requested that an **independent appeals procedure** be introduced to **review all immigration-related decisions** and had stated that *"(E)ngaging in such a procedure, as well as resorting to judicial review of adverse decisions, should have a suspensive effect in respect of such decisions"*.

While it is acknowledged that work on a new Immigration, Residence and Protection Bill is at an advanced stage, the issues raised by the Committee must be considered in the drafting of any such legislation, ensuring full compliance with Article 13 of the Covenant.

In particular, the **deportation without notice of any person who is 'unlawfully present' in the State** as provided for in the Immigration, Residence and Protection Bills 2008 and 2010, which would have abolished the 'Section 3 process' established in the Immigration Act, 1999, must not be included in any forthcoming draft legislation. We believe there must be an avenue to deal with and provide for vulnerable migrants who may have become unlawfully resident in the State through no fault of their own. Both the 2008 and the 2010 Bills provided the Minister, and officers acting on his behalf, with no flexibility to deal with the immigration status of persons whose residence permits are non-renewable, who are not entitled to apply for a residence permit or who have entered the State without permission, even where this has happened years previously.

The ICI believes the **establishment of an independent appeals mechanism to deal with immigration decisions** not falling within the remit of the Refugee Appeals Tribunal (RAT) is the only way to ensure access to **fair procedures and effective remedies** for migrants and their family members seeking to challenge decisions affecting their human rights. We acknowledge the Government's commitment highlighted again in its Response to the UN Human Rights Committee List of Issues to "introduce comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way"^{xvii}.

Currently, people seeking to challenge decisions refusing them permission to remain in the State or permission to enter the State – for example for the purpose of family reunification or the preservation of the family unit – are effectively forced to seek judicial review of that decision by the High Court instead of accessing a more efficient and cost-effective 'Immigration Appeals Tribunal'.

The ICI believes that access to justice for migrants already is limited in that the High Court, as part of judicial review proceedings, is not in a position to review the merits of a case and cannot deal with questions of fact. Unlike an expert administrative tribunal, the High Court does not have the power to alter or vary an administrative decision and access to the court is severely limited by the 14-day time limit contained in the Illegal Immigrants (Trafficking) Act, 2000 as well as by the high financial risk applicants are taking as – in case of an unsuccessful outcome of their application – may have to pay the legal costs of the State.

4. Rights of Persons Belonging to Minorities (Articles 2, 23, 24, 26 and 27) – Racism and Integration of Migrants

Ireland requires an integration strategy that moves beyond 'Integration a Two-Way Process' (1999)^{xviii}, NAPAR (2005)^{xix} and 'Migration Nation' (2008)^{xx}.

Furthermore, the ICI is of the view that there is a need for concrete actions, such as:

- setting up an **anti-racism helpline** similar to the one provided by the PSNI^{xxi} in Northern Ireland, which operates a 24 hour accessible reporting system, recording up to 700% more cases than are recorded in the Republic, and
- reform of the current laws to combat racism, including reform of the 1989 **Incitement to Hatred Act** to adequately address the matter of 'racially motivated' offences and 'hate speech'.

Additionally, a robust response to **on-line racism** must be ensured through the ratification and national implementation of the European Convention on Cyber Crime.

The ICI has made a more detailed submission with wide-ranging recommendations on issues of **Integration, Multiculturalism and Combatting Racism** to the Joint Committee on Justice, Defence and Equality.^{xxii}

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ENDNOTES

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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fIRL%2f93%2f9070&Lang=en

ii http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_78_9047_E.pdf

iii <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ImmigrantCouncilOfIreland.pdf>

iv See Section III Paragraphs 153-157 of the Government Report

v The Domestic Violence Coalition consists of the Domestic Violence Advocacy Service (DVAS), the Irish Immigrant Support Centre (NASC), Women's Aid, Doras Luimní, AkiDwA, Longford Women's Link, Sonas Housing Association Ltd. and the Immigrant Council of Ireland (ICI).

vi <http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf>

vii <http://www.inis.gov.ie/en/INIS/Pages/WP07000024>

viii See footnote 3 above.

ix See also: Asylum seeking victims of human trafficking in Ireland: Legal and practical challenges at:

http://www.immigrantcouncil.ie/images/stories/pdfs/UN_Gift_report_18.11.2011.pdf

x **See Paragraph 287 of the Government Report**

xi http://www.legalaidboard.ie/lab/publishing.nsf/content/Human_Trafficking_Legal_Advice_and_Aid

xii Anti-Slavery International and Eaves Poppy Project, A Guide to Legal Remedies for Trafficked Persons in the UK, April 2010 (see:

http://www.antislavery.org/includes/documents/cm_docs/2011/r/rights_and_recourse_report_final_pdf.pdf)

xiii see: <http://www.justice.ie/en/JELR/criminal%20injuries.pdf/Files/criminal%20injuries.pdf>

xiv see: <http://www.piab.ie>

xv The labour law in Ireland does not cover the sex industry. Other informal work sectors like domestic work are covered but only in so far as the worker has permission to reside and work in Ireland (see also Hussein v Labour Court & Anor [2012] IEHC 364).

xvi [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/\\$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf)

xvii http://www.merriestreet.ie/wp-content/uploads/2010/05/Programme_for_Government_2011.pdf

xviii [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7WMK3Z1533318-en/\\$File/INTEGRATION%20-%20A%20Two%20Way%20Process.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7WMK3Z1533318-en/$File/INTEGRATION%20-%20A%20Two%20Way%20Process.pdf)

xix <http://www.nccri.ie/pdf/ActionPlan.pdf>

xx [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/\\$File/Migration%20Nation.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/$File/Migration%20Nation.pdf)

xxi http://www.psni.police.uk/hate_crime_leaflet_-_racist1.pdf

xxii <http://immigrantcouncil.ie/media/press-releases/811-national-action-plan-needed-to-combat-racism>